

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LIFE STYLE FUTON, INC., and EASY FIT, INC.,

Plaintiffs,
v.

EASYFIT SLIPCOVER, LTD., ILYASS ET TAHIRI,
TUCOWS, INC., TUCOWS.COM CO., and
CABREXA, LLC, and the domain names:
www.easyfitcover.com, www.easyfitslipcover.com,
and www.easyfitslipcover.co, in Rem.

Defendants.

Case No: 1:21-cv-1482

**DECLARATION OF REG LEVY IN FURTHER SUPPORT OF
TUCOWS' OPPOSITION TO A PRELIMINARY INJUNCTION**

I, Reg Levy, declare as follows:

1. I am an attorney duly licensed in the State of California and am employed full time by Tucows Inc. ("Tucows") as Head of Compliance. I am competent to testify to the matters stated herein.

2. I submit this Declaration in Further Support of Tucows' Opposition to Plaintiff's Motion for a Preliminary Injunction in accordance with this Court's order and directive on the record of the hearing held today, March 22, 2021.

3. Attached hereto as **Exhibit A** is a true and correct screenshot captured today, March 22, 2021, of the "Terms of Service" linked as such to the "home" page of Cabrex.com and posted at <https://cabrex.com/pages/terms-of-service>, and annotated to point out the statement therein:

"Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell our products and services to you."

4. Attached hereto as **Exhibit B** is a true and correct screenshot captured today,

March 22, 2021, of the Internet Archive (www.archive.org) “Wayback Machine” capture of the Cabrex.com “Terms of Service” webpage as of January 27, 2021, prior to the filing of this Action by the Plaintiffs, and annotated with an arrow to point out the statement therein:

“Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell our products and services to you.”

5. Attached hereto as **Exhibit C** is a true and correct screenshot captured today, March 22, 2021, of the “home” page at Cabrex.com showing how to access the “view source” feature of the Google Chrome browser to reveal the underlying source code for the web page which is publicly available and is converted, as is the function of an internet browser, into the “web page” as displayed to the visitor. Similar features are provided in the ordinary menus of popular browsers as Internet Explorer (Microsoft), Safari (Apple), and Firefox (Mozilla, multiple platforms).

6. Attached hereto as **Exhibit D** are true and correct screenshots captured today, March 22, 2021, of the result of accessing the source code of the “home” page of Cabrex.com using the menu shown in paragraph 5, and annotated with arrows to point out code references to various functional elements including graphic icons, fonts, and a “stylesheet” provided as shown therein by references to web addresses of “ShopifyCDN.com” and “CDN.Shopify.com”, operated by Shopify. This information is publicly accessible and has been accessible to the Plaintiffs since prior to this Action having been filed. The numerous references to Shopify functions within the code are apparent without having to possess a technical knowledge of the code itself.

7. Attached hereto as **Exhibit E** is a true and correct copy of the authoritative Tucows public domain registration data, or WHOIS data which provides certain information

about the domain registration (*See, e.g., Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393 (2d Cir. 2004)). Consistent with Tucows' registration service reseller model, the public WHOIS data notes, as annotated to point out:

“Reseller: Shopify”

and

“Registration Service Provider:
Shopify, domainsupport@shopify.com
+1.8667040252
http://www.shopify.com”

This information was available to the Plaintiffs before this Action was filed.

8. As can be further seen in Exhibit E, the WHOIS data is annotated to point out the Name Servers for the Cabrex.com domain name. Name Servers are servers which provide the Domain Name System (DNS) routing instructions by which domain names are connected with services such as web page hosting or email services. The listed Name Servers are identified as:

Name Server: ns-cloud-d1.googledomains.com
Name Server: ns-cloud-d2.googledomains.com
Name Server: ns-cloud-d3.googledomains.com
Name Server: ns-cloud-d4.googledomains.com

Hence, it can be seen that connections between DNS inquiries and services such as web hosting or email are provided by Google. This information was available to the Plaintiffs before this Action was filed.

9. Google further provides publicly-accessible DNS inquiry tools to query individual “DNS Records” which identify specific numerical internet addresses corresponding to certain services. Attached hereto as **Exhibit F** are true and correct copies of the Google DNS tool’s responses to inquiries about the DNS “A record” and the DNS “MX records”. In particular, the

“A record” is reported to be at the numerical address 23.227.38.67 and all of the “MX records” are reported by Google to be hosted by Google.com.

10. Attached hereto as Exhibit G is a true and correct copy of the Wikipedia entry for “List of DNS record types” showing that an “A record” is an “Address record” which is “...most commonly used to map hostnames to an IP address”, and that an “MX record” is a “Mail exchange record” associated with email services.

11. In North America, the authoritative body for assignment of internet protocol addresses is the American Registry for Internet Numbers (ARIN), located at Arin.net. ARIN maintains a searchable database of entities to whom blocks of internet protocol addresses are assigned. Attached hereto as Exhibit H is a true and correct copy of the ARIN lookup response to the IP address where Cabrexa.com is hosted (i.e. 23.227.38.67 noted in paragraph 9 above), showing that the operator of the corresponding internet address range into which it falls (i.e. the web hosting service) is listed by ARIN as:

Full Name	
	Shopify, Inc.
Handle	
	SHOPI-1
Address	
	151 O'Connor Street, Ground floor
	Ottawa
	ON
	K2P 2L8
	Canada
Roles	
	Registrant

12. All of the data relied upon in this Declaration is publicly available from authoritative sources, and has been available to the Plaintiffs since before this Action was filed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true

and correct.

Executed in Los Angeles, California on March 22, 2021.



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